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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY JMG DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ROBERT LEE WILLIAMS,

Case Nos. 15cv2126 BEN
11cr3529 BEN

Movant,

vs.

**ORDER DENYING § 2255
MOTION**

UNITED STATES OF AMERICA,

Respondent.

INTRODUCTION

Movant filed a motion under 28 U.S.C. § 2255 to vacate, set aside, or correct a sentence. The Government filed a response. Movant filed a reply. The Court finds no evidentiary hearing is necessary and denies the motion.

DISCUSSION

Movant was tried by a jury and found guilty of violating 18 U.S.C. § 2252(a)(2) (receipt of images of minors engaged in sexually explicit conduct) and § 2252(a)(4)(B) (possession of matters containing images of sexually explicit conduct) and sentenced to 240 months in prison. The judgment was affirmed on appeal. Movant now contends that: (1) his appellate attorney provided ineffective assistance; (2) judicial deception required a *Franks* hearing; and (3) a search warrant was procured in violation of due process.

8 Appellate briefing included a 13-page argument that Movant wanted Mr.
9 Hermansen to argue: *i.e.*, that the search warrant should have been suppressed. That
10 issue was decided against Movant by the Ninth Circuit Court of Appeals. It is the
11 same issue he raises once again in the present § 2255 motion. Movant has
12 demonstrated neither ineffective assistance of his appellate counsel, nor prejudice.
13 On the contrary, Movant received excellent assistance of appellate counsel.
14 Therefore, the § 2255 motion fails to satisfy the two-pronged ineffective assistance
15 of counsel test set out in *Strickland v. Washington*, 466 U.S. 668 (1984). *See*
16 *also Mitchell v. U.S.*, 790 F.3d 881, 885 (9th Cir. 2015) (“defense team conducted a
17 professional-caliber investigation and then, facing unenviable choices, made a
18 reasonable strategic decision Strategic decisions such as this do not support a
19 claim of ineffective assistance of counsel”).

1 futile action can never be deficient performance. *Sexton v. Cozner*, 679 F.3d 1150,
2 1157 (9th Cir. 2012).

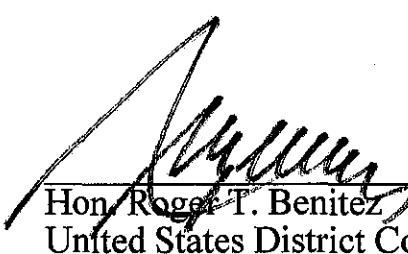
3 The affidavit supporting the search warrant was accurate. Clearly, it was not
4 ineffective assistance to not raise it on appeal. Regardless, Fourth Amendment
5 exclusionary rule claims are generally not even cognizable on habeas review. *See*
6 *Davis v. U.S.*, 564 U.S. 229 (2011) (citations omitted) (“Exclusion is not a personal
7 constitutional right, nor is it designed to redress the injury occasioned by an
8 unconstitutional search. The rule’s sole purpose, we have repeatedly held, is to
9 deter future Fourth Amendment violations.”). In *Stone v. Powell*, 428 U.S. 465, 494
10 (1976), the Supreme Court recognized that habeas proceedings are so far removed
11 from the offending conduct that any deterrent effect is outweighed by the societal
12 cost of ignoring reliable, trustworthy evidence and the judicial burden of litigating
13 collateral issues. Where defendant has had an opportunity for full and fair litigation
14 of a Fourth Amendment claim, habeas corpus relief is not available on the ground
15 that the evidence obtained in an unconstitutional search or seizure was introduced at
16 his trial. *Id.*

17 **CONCLUSION**

18 The motion is denied. The Court declines to issue a certificate of
19 appealability.

20 **IT IS SO ORDERED.**

21 DATED: 2/18/08

22 
23 Hon. Roger T. Benitez
24 United States District Court
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